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THE MEAT-PACKING INVESTIGATION

SUMMARY

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I. HISTORY OF THE INVESTIGATION

WHEN the President on February 7, 1917 directed the Federal Trade Commission to undertake an investigation of the conditions surrounding the production and distribution of the nation's meat supply, he brought to a head a contest that had for several years been brewing and for a year had been passing through its first rather significant stage of Congressional inquiry. That year of contention and strife apparently had its influence on the character of the investigation which followed and some knowledge of it is necessary to an understanding of the later stages of the controversy.

The demand for the investigation did not, as is sometimes supposed, come from consumers anxious over the steadily rising price of meat, but from live stock producers concerned over the low and fluctuating price of meat animals. A feeling of distrust and hostility toward the large packing interests has long been shown among feeders of live stock and has frequently been given vent through the various regional and national live stock associations. In the early days the men who

established the packing industry had personally attended such meetings, cultivating a friendly feeling and depending upon the friendliness of one party in these associations to checkmate any hostile movement of the other. The younger generation of packers had neglected this personal touch and had depended upon their subordinates to maintain friendly relations.

The season of 1915 brought heavy and unexpected losses to the feeders. As is well known, the number of meat animals, especially of cattle, had for some years been declining. From being a heavy exporter of meats we became, especially after the removal of the duty in 1913, an importer of fresh meats. In the fall of 1914 there had been an outbreak of foot and mouth disease which checked the movement of cattle for some weeks; and when they began to move again it was in such numbers as to force down prices and entail heavy losses on those who sold in the closing weeks of the year. This, however, did not deter feeders from planning for large operations in 1915. It was reasoned that foreign beef would be turned away from our ports directly to Europe, that Europe's demands would draw on the American supply, and only one result could follow — higher prices for the feeder. Imports did cease, exports increased; but prices did not rise, and the year turned out disastrously for feeders.¹ The situation seemed to require an explanation.

In November, 1915, a marketing conference was held in Chicago under the auspices of the Bureau of Markets. The live stock men and packers, wholesale and retail dealers were invited. All were represented. The packers, however, did not attend in person and their representative is reported as saying little and listening much. The cattle men seem to have expected the

¹ A. E. deRicqles at the Chicago marketing conference held in Chicago, November, 1915, reprinted in *Wallace's Farmer*, November 26, 1915.

packers in such a crisis to explain why prices had not moved up, and took their absence as a slight.¹

Early in January, 1916, the National American Live Stock Association held its annual meeting at El Paso, Texas. The big packers attended this meeting in person. But in spite of their presence and efforts to prevent it, the convention created a marketing committee to make a study of marketing conditions, and funds were raised by subscription to finance it. On February 1, Mr. Borland of Missouri, without the knowledge of the live stock men, introduced a resolution directing an investigation of the meat industry and Mr. Doolittle of Kansas introduced a similar resolution. The marketing committee supported the Borland resolution during the whole year, but so effective was the opposition² of the packers that no vote could be reached on it; and finally on January 8, 1917 it was given its death blow by an amendment to the Agricultural Appropriation bill providing for an item of \$50,000 to enable the Department of Agriculture to investigate the marketing of live stock. This amendment was offered by Mr. Mann. Representatives Borland and Kent charged that it was a device for heading off a genuine investigation, and the charge was not seriously denied. The lobbying tactics of the packers were exposed by the evidence later secured by the Federal Trade Commission.³ They sought to defeat all

¹ E. L. Burke. Hearings on H. R. 13,324, Part 3, p. 218. "Indifference on their part to the producers' situation really led to very much more drastic measures later." See also Col. Ike Pryor, Hearings on the Kenyon-Kendrick bills, Part 2, p. 1690.

"The fact that we ignored the Brand conference in November, seems to have precipitated the fight," is the conclusion of R. C. McManus, representing one of the packers at the Borland hearings.

² See Hearings on Senate bill 5305, Part I, pp. 45, 55.

³ See Report, Part 3, pp. 296-308 for correspondence showing how the packers used the live stock commission men to defeat an investigation sought by their patrons. It should, of course, be said that the live stock associations were not unanimously for an investigation. There seems to have been a pro-packer and anti-packer faction within several of these organizations. Moreover, as the legislative program unfolded, the com-

movements for an investigation; if one must be had, they sought to have it agreed upon beforehand as a broad inquiry "along business lines" without "mud slinging or gallery playing," and "with very little publicity," and they preferred to have it conducted by the Department of Agriculture.

On the day the Mann amendment was adopted, a half dozen Congressmen, among them Messrs. Borland, Kent, and Stephens called upon the President and urged him on his own motion to direct the Federal Trade Commission to make the investigation. After a few days of consideration the President decided to order the investigation and asked Mr. Hurley, then chairman, for plans and estimates. Mr. Hurley advised that the investigation be made by an inter-departmental committee representing the Departments of Agriculture, the Interior, Commerce, and Justice, and the Trade Commission. He would not ask that the committee be clothed with any special powers; its function would be to gain the coöperation of the industries investigated by friendly conference and suggestion. When Mr. Kent learned of the plan he sent a letter to the President denouncing it as a "toothless, clawless" method that would accomplish nothing.¹ This led to a conference with Mr. Hurley on January 31, and on the same day Mr. Hurley resigned.

mission men found proposals touching adversely their own interests directly. Still it must be said the commission men who opposed the legislation seemed on the whole to speak in the interest of the packers rather than their own.

¹ "This toothless, clawless, unarmed, unarmored method of conducting what is in the nature of a contest between a lot of disorganized meat producers and consumers on two sides of the field as against the intrenched packers whom we have no hesitation in declaring to be law breakers, would be laughable if not tragic. If the Federal Trade Commission is constituted for the purpose of having the lamb lie down inside the lion, it would seem to be superfluous. There are plenty of means of securing information more or less accurate, such as the packers are willing to put out, but we have been hoping that through the authority of law we could have the meat business investigated to the end of obtaining a full comprehensive knowledge of conditions of production, manufacture, distribution and costs, which investigation can never be possible except under due authority of law, with ample powers granted the investigating body." Hearings on the first Kendrick bill, on Senate bill 5305, Part 1, pp. 129-132.

The Commission was directed "to investigate and report the facts relating to the production, ownership, manufacture, storage, and distribution of foodstuffs . . . to ascertain the facts bearing on the alleged violations of the anti-trust acts, and particularly upon the question whether there are manipulations, controls, trusts, combinations, or restraints out of harmony with the law or the public interest." The President assured the Commission of the coöperation of the Department of Agriculture and asked Congress for \$400,000, the amount estimated by the new chairman as required for the investigation. Congress on February 28 appropriated \$250,000 and the Commission started on the most considerable undertaking in its history.¹

The Report, ample as it is, falls short in certain respects of what was expected from the investigation. The packers were afraid from the beginning that they would be singled out for a special, unfriendly investigation, and tho they tried to avoid it, their tactics assured it.² They wanted the live stock industry and

¹ In August, 1918, the Commission published a summary of its findings and recommendations, but it was not till near the end of the year that the first installment of the report appeared as Part II. It deals with the Evidence of Combination among Packers. Part I, dealing with the growth and present position of the meat packing industry, especially of the five large companies, appeared about the middle of 1919. Part III, describing the Methods of the Five Packers in Controlling the Meat-Packing Industry, appeared in the fall of 1919. Part IV, under the title, the Five Larger Packers in Produce and Grocery Foods, was published in the spring of 1920. About the same time appeared Part VI, a study of the cost of fattening, growing, and marketing beef animals. This volume was prepared in the Department of Agriculture. A little later, too late to be used in the present paper, the Commission published its study of the Profits of the Packers, as Part V. Two other volumes that have grown out of the meat-packing investigation have been published, one dealing with the Wholesale Marketing of Food and the other with the Private Car Lines.

² Some of their tactics are indicated by the recommendations of a committee representing one of the packing companies, if not more, at the hearings on the Borland resolution, in April, 1916. This committee recommended taking such steps "as will first bring better feeling by showing a disposition to coöperate.

"Second. Get something coöperative started which cannot be finished for some time.

"Third. See that our friends in these cattle organizations do organize so as to discredit and undermine [the] Walter Fisher, deRicqles, and Jastro conspiracy.

"Fourth. Get together all the political strength to persuade the subcommittee of

the retailing of meats brought into the inquiry. This would tend to divide public interest, raise up allies in case the inquiry should become too inquisitorial, and, as the packers apparently believed, would show their own profits, at least so far as they had a bearing on prices, to be moderate compared with those of the feeders and the retailers. Their request for a "hoof to table" investigation was, therefore, both natural and proper. Such an investigation was also wanted by the live stock men, who believed that it would disclose the irregular and inadequate returns to the feeders and the need of a complete reorganization of the live stock market. As a matter of fact this was the plan agreed upon. The Federal Trade Commission was to investigate the slaughtering and wholesaling stages, while the Department of Agriculture was to cover live stock production and the retail end of the industry. For some reason, probably due to our entrance into the war, the Department of Agriculture deferred its part of the inquiry — a delay that was regarded as a grievance by live stock men.¹

So much it has seemed necessary to recount in order to show that when the task of inquiring into the slaughtering business was delegated to the Commission there

the Judiciary Committee not to report out the Borland resolutions unless necessary to prevent a bill for congressional inquiry.

"Fifth. To so combine the question of the packers' investigation with the more comprehensive scheme mentioned by Fisher that the whole undertaking will appear so colossal as to be unattractive.

"Sixth. See if the Bureau of Markets cannot be induced to start to publish data and familiarize itself with the situation to such an extent that it will begin to represent the cattlemen in all disputes. . . .

"Eighth. Could there not be published current expert comments upon the beef markets which could be read by the commission men and farmers so that the explanation of breaks and fluctuations could be understood at the time. . . ." Hearings on H. R. 13,324, Part V, p. 1421.

¹ The grievance is most fully set forth by Mr. E. C. Lasater. Hearings on H. R. 13,324, Part V, especially at pp. 1442, 1460, and 1536. How far Part VI of the report which appeared in April, 1920 meets their expectation is not known.

had already been more than a year of wrangling over the question, during which much warmth was developed on both sides. Judging from the response made by the packers to the Commission's first general inquiries,¹ they stood ready, now that an investigation had been decided upon, to coöperate with the government, at least as long as their kind of an investigation was being conducted. As the inquiry proceeded, either because of the kind of information sought, of the method of seeking it, or both, there developed an inordinate amount of crimination and recrimination as to procedure, fairness of the hearings, accuracy of the facts stated, proper use of materials, soundness of conclusions drawn, the motives of the cattlemen, the political aspirations of persons concerned with the investigation, advertising and publicity methods, subsidizing the press, lobbying tactics, and like matters, that tended to obscure the main issues. About these contentions we need not here concern ourselves.

II. GROWTH AND PRESENT POSITION OF THE LARGE PACKING COMPANIES

All the world knows of the revolution that has occurred in the slaughtering business during the last generation, of the practical disappearance of local slaughtering and of the rise in its place of a highly centralized system of production and distribution of meat products. Everyone has known more or less vaguely of the growth in size of four or five of the great packing companies in every section of the country and of the expansion of their activities into other fields. Part I of the Commission's Report sets forth this growth and expansion in great fullness. The theory

¹ For their replies see the Report, Part I, Exhibit IV.

that seems to underlie the whole report is that the dominant position of the five large companies is the most significant feature of the food situation the Commission was set to investigate; and this doubtless explains why the inquiry has so largely centered around these big concerns and their activities.

Turn which way we may, the growth and expansion of the large companies has been striking, even in an age of expansion and integration, especially during the past two decades. From the one slaughtering plant owned in 1857 by a member of this group, Swartzschild & Sulzberger, now Wilson and Co., Ltd. the number of plants owned by the group in 1887 had risen to only seven, by 1897 it had grown to twenty, by 1907, to 57, and in 1917 it stood at 91 plants. The same rapid growth is seen in the number of branch houses through which most of the products of these packing houses are marketed. In 1884 there were but two such houses, operated by Armour; in five years the number was increased to 50 for all the members of this group; by 1900 the number had grown to 591, in 1912 the 1000 mark was passed, and in 1917 they were operating 1120 of these wholesale markets, nearly half of them owned by Swift and Armour, while all interstate slaughterers other than the five large companies had but 139. This means that 89 per cent of the branch houses employed primarily for selling fresh meats are operated by the five companies, and but 11 per cent by all other interstate slaughterers.

That the two big packers are large owners of the refrigerator cars used in carrying their meat to market has been commonly known. The Commission found that of the 16,875 "beef" cars in the United States, *i. e.*, those fitted with brine tanks required for securing low enough temperature for the shipment of frozen

meats, 15,454 belonged to the five large concerns, 1146 to other interstate packers, and 275 to other interests. They own also 1600 ventilator cars served with bunker ice. These cars are used not only to supply their branch houses and other wholesale outlets, but for serving their remarkable car-route system by which more than 30,000 towns, large and small, in all parts of the country, are reached at regular intervals, giving their owners a unique position in their command over transportation service. Taken together, they operate about 45 per cent of the cold storage space of the country. They are important owners of stockyards through which meat animals pass to the packing plants and to other markets, a phase of their activities to receive special attention below.

Their performance keeps pace with their physical equipment. The table below shows their present position as slaughterers. The figures are for the calendar year 1916:

PROPORTION OF MEAT ANIMALS SLAUGHTERED BY THE FIVE LARGE COMPANIES AND BY OTHER INTERSTATE SLAUGHTERERS ¹

	Cattle		Calves		Sheep		Swine	
	Head	Per Cent	Head	Per Cent	Head	Per Cent	Head	Per Cent
Five Companies . .	6,535,332	82.2	1,654,942	76.6	10,518,874	86.4	25,737,269	61.2
Swift Interests . .	2,276,068	28.6	758,278	35.1	4,434,854	36.4	10,333,755	24.6
Armour Interests .	1,748,909	22.0	446,393	20.7	2,756,522	22.7	7,775,342	18.5
Morris Interests .	1,148,562	14.5	194,320	9.0	1,107,405	9.1	2,754,915	6.5
Wilson and Co. . .	741,401	9.3	152,219	7.0	988,891	8.1	2,635,081	6.3
Cudahy Pkg. Co. .	620,392	7.8	103,732	4.8	1,231,202	10.1	2,238,176	5.3
All other	1,412,466	17.8	505,608	23.4	1,653,389	13.6	16,320,133	38.8
Total, interstate slaughterers . . .	7,947,798	100.0	2,160,550	100.0	12,172,263	100.0	42,057,402	100.0

It will be noticed that the table does not include the total kill of the country, but only those animals which

¹ Report on the Meat-Packing Industry, Part, I, p. 106.

pass into interstate commerce. A considerable number of animals are slaughtered by "wholesale local slaughterers," which if included, would reduce the proportions of the five companies to 74.5 for cattle, 62.5 for calves, 78.5 for sheep, and 56.9 for swine. The packers contend that not only these animals, but also those killed by farmers and retail butchers should be included in any count intended to show the monopolistic position of the big companies. Such a count would show the big packers as having control of but a modest proportion of the meat supply. The Census figures for 1909 indicate, *e. g.*, that only about 60 per cent of beeves are handled through meat-packing establishments, about 30 per cent through retail slaughtering houses, and about 10 per cent are killed on farms.¹ But, assuming these estimates to be correct, what bearing have they on the charge of monopoly? They only show that there are certain geographical areas to which the supposed monopoly does not extend; and this is poor consolation to the 60 or 70 millions of people in cities and villages who are dependent upon centralized slaughter for their supply of meat. The Commission properly holds, therefore, that

. . . The fact that the farmer has an opportunity to raise and slaughter cattle for his own use or for the local use of an adjacent town or village has little bearing on the question of the monopolistic position of the big packers as regards their control of prices which the great majority of the urban population must pay for meats.²

The dominant position of the large packers in the production and distribution of meats is clear. But in recent years they have pushed their activities to other fields of food production, some of them related to their principal business and others but remotely, or not at all,

¹ The Meat Situation in the United States. Report No. 113, Part V, Department of Agriculture, 1916, p. 15.

² Report, Part I, p. 118.

related to it. It is not necessary to assume that this reaching out into other fields of food production is in pursuit of a plan "to monopolize the food supply of the country." It may, indeed, result in this; but the expansion, rapid as it has been, seems a natural development. Equipment for refrigeration being required for the care of fresh meats, it was natural that the packers should seek to utilize it more fully by engaging in those lines of food production requiring the same service. This no doubt was the chief reason for embarking in the poultry, egg, butter and cheese business. They have become important factors in the handling of these products. The Commission estimates that the five packers handle about "half the poultry, eggs and cheese in the main channels of interstate commerce."¹ One company in 1917 handled 50,000,000 pounds of butter, half of which it manufactured; the sales of another amounted to \$23,861,000. Four of the big companies own 56 creameries and control the output of many others. To supply their creameries they operate over 1500 buying stations. The total production of oleomargarine in the United States in 1916 was 152,500,000 pounds, of which four packers handled 63,600,000, tho their sales amounted to more than 76,000,000 pounds in that year, and in 1918, to 171,000,000 pounds.² The packers are producers of crude cottonseed oil, tho they are by no means the largest producers in this industry. Their position as refiners of cottonseed oil is much stronger, their output in 1916-17 being 64 million

¹ Report, Part I, p. 231. The Commission's method of showing the extent of packer control of poultry, eggs, and dairy products is questioned, as in the case of the slaughter of meat animals. Swift & Co., for example, estimate that it handles only about 5 per cent of the total production of poultry, butter, and eggs, and about 6 per cent of those products entering the channels of trade. The proportion handled by the five packers, it is held, cannot exceed 15 or 20 per cent instead of the 50 to 65 per cent shown by the Commission. Analysis and Criticism of Part II, of the Commission's Report, p. 93.

² Part IV, Exhibit XVI. Cited in the "Exhibit of the National Wholesale Grocers' Association vs. The Director General," p. 9.

gallons out of a total reported of 201,400,000. The Commission's figures showing¹ that of the lard compound and lard substitutes produced by interstate slaughterers in 1916, 84.7 per cent was produced by the five big companies, seem impressive; but when taken in relation to the total production of the country the output of any one packer sinks to very modest proportions and the output of the five big companies is only 42.5 per cent of the total, probably even less. The cottonseed oil manufactures produce 418 million pounds of lard compound out of a total of 839 millions, the five big companies, 356 millions, and all other interstate slaughterers 64 millions.² Oleomargarine is another food product that has naturally grown up with the packing industry. In spite of the repressive tax on this industry, laid for the benefit of the dairy interests, production of this wholesome food had risen in 1916 to 152 million pounds. One independent producer manufactures 23.8 per cent of this amount, Swift interests 17 per cent, Armour interests 13.8 per cent, Morris 10.4 per cent, Wilson 4.2 per cent, while Cudahy and all the independent interstate slaughterers produce only about one per cent of the total output. It may be noted in passing that the Commission charges that between the four big packers and two independent concerns an "oleo legislative pool" exists, tho no evidence is given that there is anything more in the arrangement than the maintenance of a joint fund raised by assessments in proportion to output, for meeting common expenses in overcoming hostile or securing favorable legislation for the industry.³

The packers have become important distributors of canned fruits, vegetables, salmon, and milk, and more

¹ Part I, p. 223.

² *Ibid.*, p. 224.

³ *Ibid.*, pp. 226-228.

recently large classes of groceries. The extent of these dealings has for the first time been set forth by the Commission. While the percentages of individual packers in many of these lines is small, and the combined business of the large companies is not sufficient at present to justify a charge of monopoly, the growth of these "unrelated" lines has been so great and rests on such a basis as to warrant the fear of monopoly not only of meats but of the chief substitutes for meat and many other kinds of food. By the terms of the agreement with the Attorney General in December, 1919, the companies are to withdraw from the grocery and other kinds of business, not related to the packing industry.

The activities of the packers in the production of fertilizers and leather have had a similarly natural development. Their connections with financial institutions which the Commission features ¹ do not appear to be unusual for concerns of the magnitude they have reached. Some twenty-two banks are listed in which stock ownership of two or more packers is shown, but the holdings do not seem in any case large and are probably held mainly to give the packer or his representative a place on the board of directors. The Commission also shows a list of eight cattle loan companies in which two or more packers or their families are majority owners.

There has been brought to light their joint or individual ownership, directly or indirectly, of market publications, stockyards, terminal railway companies, land development companies, cattle ranches, cold storage and warehousing plants, rendering companies, machinery and supply companies, canning companies, creameries, and cheese factories, box factories, hotel supply companies and hotels themselves, grain elevators,

¹ Part I, pp. 294, 359.

cotton oil mills and refineries, and many other industries.

These various activities are carried on by hundreds of corporations that have been acquired or created for convenience of one sort or another, sometimes clearly to conceal the ownership.¹ They command great wealth. As shown by its balance sheet November, 1918, the net worth of Armour and Company was 177 millions, Swift and Company 247, Morris and Company 49, Wilson and Company 46, and the Cudahy Packing Company 35 — a total of 555 millions. It is with these companies and their highly developed manufacturing and distributing system, standing in a position of great strategic importance in the path of the live stock of the country on its way to the consumer, that the Report deals; for it soon becomes apparent that the investigation has less the character of a study of the meat-packing industry than of a study of the activities of the great packers in that industry.

III. THE STOCKYARDS SITUATION

There has for sometime been complaint by the live stock men that the packers own many of the stockyards and that this ownership carries with it the control of packing-house sites, the rendering business, cattle loan companies and other institutions which grow up in connection with the yards. The yards companies own the exchange building where the commission firms are housed, and the relationship of landlord and tenant thus created hampers commission men in demanding better services and in securing better prices for their principals, the stock men. "For controlling prices and increasing the power of price making, the ownership of the

¹ See especially Part I, chap. vii, for an account of this phase of the matter.

stockyards by the packing house is one of the most complete means.”¹

The report of the Commission discloses a wider ownership of stockyards by the packers than had previously been known. It shows that one or more of the big packers, or members of their families, own a majority interest in 22 of the 50 centralized stockyards of the country, and that they have a minority interest in several more. The Commission points out that “more than 84 per cent of all animals which are marketed at stockyards in the United States pass through yards in which these packers are interested. They have the controlling interest in the marketing yards through which 56.8 per cent of the animals pass, and have a minority interest in other yards through which an additional 27.7 per cent of the animals pass.”²

The packers hold that their ownership of the yards has been a necessity; that they are more concerned with all the conditions that go to make a good live stock market than any other interest and that they have acquired these yards primarily to promote “efficient service.”

The producers of the live stock did not provide facilities for caring for their product from the time of arrival at the market until sold, and the railroad companies did not provide such facilities, so that it devolved upon the packers, at enormous cost, to establish and maintain the stock yards. It is doubtful whether such efficient market places would ever have existed had they not been established in this manner.³

The answer to this is that in all the important markets and in most of the smaller ones capital for developing stockyards was forthcoming without the aid of the

¹ A. R. de Ricqles. *Proceedings of the Conference relative to marketing live stock and related matters*. Chicago, November 15-16, 1916. This is usually spoken of as the Brand Conference.

² Report, Part III, chap. i, p. 11.

³ Senate Hearings on Senate bill 5305, Part I, p. 83.

packers; in fact, according to the details gathered by the Commission, the packers have pretty regularly received aid from stockyards companies in the form of gifts of stock, cash bonuses, and grants of plant sites, often for locating at the yards, sometimes as an inducement to remain there. The yards which the packers have been compelled to develop have been relatively few and unimportant. Even the large yards have not been established and maintained "at enormous cost" in the sense of requiring large investments of new capital, for they have usually been able to pay good dividends, aid needy packers in their enterprises, and re-invest earnings rapidly enough to provide adequate facilities as traffic increased.

The great care of a yards company has always been to attract stock to the pens. They have usually been established ahead of the packing plant at convenient stages of the journey of live stock toward eastern markets. The yards at Chicago were at first primarily feeding places for such shipments. Each stock-carrying railroad in the beginning had its own yard; but as the market grew the inconveniences of maintaining separate yards became so great that a common meeting place for buyers and sellers became necessary. This was provided in 1865 by the Union Stockyards and Transit Company, before centralized slaughter even of hogs had become important and long before the day of centralized slaughter of cattle. The company was capitalized at \$1,000,000, of which all but \$75,000 was supplied by the roads. The yards remained under railroad control till the early nineties. As packing plants grew up about them the conditions for permanent success were created without any financial aid from the packers. What the yards company needed was the steady market the packing houses could give, not their

money. The Chicago company was prosperous from the first. It paid from 10 to 20 per cent cash dividends regularly on an increasing capitalization till 1881 when its capital stood at \$13,200,000 — the entire increase in the opinion of the Commission having been made through stock dividends. The records of the company prior to 1905 do not exist, but the present chairman of the Board of Directors expresses the belief "that all increases in capitalization in the earlier years of its existence represented either actual cash invested or its equivalent in property or earnings."¹ A reorganization occurred in the early nineties which ended in the acquisition of all the stock of the company by a New Jersey corporation, and the old company's capitalization has remained as fixed in 1881 at \$13,200,000 upon which dividends have been paid since 1891 at the rate of 13 per cent. Soon after the New Jersey corporation was formed, Armour, Swift, and Morris bought a tract of land some 25 miles south of Chicago in Indiana, with the avowed purpose of removing their plants to this point. The move seems to have resulted in the yards company issuing to these firms \$3,000,000 of 5 per cent income bonds to run for 15 years on the condition that they remain at the Chicago yards for that term. Other packing companies also received subsidies. These bonds expired in 1907. The packers still wanted to be induced to remain at Chicago, but legal difficulties appearing in making a direct grant, resort was made to the organization of a new corporation in which it was planned to sell stock to the large packers on favorable terms. As it turned out, however, only Armour was favored with such purchase. The matter was managed by Mr. F. H. Prince of Boston. Mr. Armour explains what happened as follows:

¹ Report, Part III, pp. 194-197.

He [Mr. Prince] came to me and wanted to know if I would take a fifth interest in the stock yards. . . . I told him I would, and he went along and perfected his organization, and I took a fifth interest for Armour & Co. My understanding when he came to me, and my understanding now is that there is no other packer whatever who has an interest in the Chicago stockyards . . . I guess you had a right to think that Swift and the rest of the packers had an interest. But the fact of the case is this: When he came to me and when he got Armour tied up he did not care anything about the other packers.¹

In this way Armour and Company became part owner of the Chicago yards in 1911. It can hardly be claimed that its purchase added to the prestige of the yards company; for neither the public nor confidential officers of the companies concerned knew of Armour's ownership till disclosed by the Commission, the whole deal being carefully concealed through the use of bearer warrants of stock and non-committal accounts.² It cannot be pretended that Armour money was essential; the yards company could have sold its stock on better terms than the packing company gave. The true financial advantage of Armour to the yards company was no doubt properly indicated by Mr. Armour. The funds of the stockyards company were here as elsewhere used — it was a well established policy³ — to attract plants to the yards, and to "tie up" those were there.

This is characteristic of the method by which packers became owners in stockyards. The Union Stockyards at St. Paul were started by A. B. Stickney in 1887 as an industry on the Chicago and Great Western. For ten years the company struggled to build up a market place, primarily no doubt for the sake of the railroad traffic it

¹ J. Ogden Armour, Hearings before the Senate Committee on Agriculture and Forestry, on Senate bill 5305, Part 1, pp. 780, 781. The Commission's Report, Part III, chap. v, gives an extended account of the involved, secretive, and questionable methods of controlling this property since 1890.

² Hearings, Senate bill 5305, Part I, p. 787.

³ Hearings, H. R. 13,324, Part IV, p. 1342. Testimony of A. G. Leonard of the Union Stockyards and Transit Company.

would give. It started packing plants of its own which did not pay and in 1897 it had reached a point where it could not make both ends meet. The company had been capitalized at \$1,000,000. Without any payment of additional money into the treasury, its stock was now increased to \$2,000,000, one-half of which was given to Swift and Company as an inducement to build a plant. There is no indication that Swift put any funds into the yards, but the new trade its plant brought must have increased the earning and borrowing power of the yards company and it seems to have been regarded as a good deal by Mr. Stickney to have given a half interest in the property there. At a much later time, in 1916, "there was much talk that Armour and Company would build a rival institution on land which it had purchased near Minneapolis."¹ The yards company issued \$500,000 new stock and without any payment of cash turned it over to Armour and Company and the citizens of St. Paul gave \$400,000 as a cash bonus for settling at the St. Paul yards and another \$100,000 stock which they had bought for the purpose.²

Starting a rival market, or threatening to do so, seems to be a recognized industry in this field of enterprise. In 1912, the Cudahy Packing Company, tho a long-time stock owner in the Omaha stockyards and one of the most firmly established packers at that place, was seeking a bonus from the stockyards company. The head of the firm wrote his superintendent at Omaha that Swift and Company had made a concealed purchase of land on the opposite side of the river but that "there was never anything heard about it, and it may be possible Swift and Company had a bonus from the stockyard company for putting up improvements." He hesitated to

¹ Testimony of W. McGivney, President of the St. Paul Union Stockyards. Hearing on H. R. 13,324, Part III, p. 513.

² Report, Part III, p. 41.

ask the company directly for a bonus because the policy of the yards was controlled by Armour and Company "and of course you can't get anything out of them unless you can do it by force." He directed that certain improvements which were under way should be held up till further orders and, "if the government men want to know why you have stopped [to] tell them we have under consideration the plan of building an entire plant somewhere else." The place in view was Council Bluffs "or somewhere on that side of the river"; and he admonished the superintendent not to "figure on any small amount from the stockyard company; if we can get anything, we can probably get a nice-sized bonus." The Commission prints a letter from the counsel of Sulzberger and Sons Company written in 1913, which shows similar tactics were being followed at Kansas City to secure "participation" in the yards.

My method of procedure would be for us to acquire the land and right of way [to a tract three-quarters of a mile from the yards], then organize a corporation, ourselves and the Cudahy interests remaining in the background, leaving it to the Kansas City Stockyards Company to find out who was really engineering the deal, which they would have no difficulty in doing, and I believe that before we got very far we would be paid well for our trouble and would be offered satisfactory terms for participation in the Kansas City Stockyards Company.¹

The conclusion reached by the Commission that the packers acquired stock in the yards not because they were inadequate or lacked funds, but because they were profitable, seems clearly borne out by the facts. The Commission charges that other motives led to the same policy, that they acquired interests in the yards for the private advantage it gave them in the packing industry, and for the control it gave them over yard services, packing-house sites and the privileges attached to

¹ V. D. Skipworth to G. F. Sulzberger, Report, Part III, p. 34.

them, over the yards banking business, the dead animal rendering business and the like.¹

It would be difficult to prove that such motives had an important part in leading the packers to acquire shares in the yard. The financial motive is sufficient to explain that policy. But once in a place of power it was natural that the packers should use it to their own advantage. Complaints were made in some places of the poor quality of the yards service supplied by the packers, but the evidence is not convincing that such complaints were greater than may always be expected from patrons or that poor service was due to packer ownership. There was considerable evidence presented at the Congressional hearings that the packers' policy in maintaining yards was liberal and that the service did not suffer from their ownership. Some evidence is presented to show the high charges for feed at the Omaha yards, but it is not shown that charges were higher there than at non-packer yards; and the most notorious case of excessive charges related by the Commission was at the Chicago yards before the packers had acquired control.² Nevertheless, no one could doubt that it is desirable to have competition in yards service and charges as between the various markets and that an independent company at each market, free from the influence of buyers who are present in all markets, gives the best assurance of such competition.

The charge that the packers use their control of stockyards to keep independents away, or to compel them to locate in unfavorable places, or to refuse them proper spur-tracks, driveways, and other facilities, is a far more serious matter. It is asserted by the Commission that at Fort Worth, where the yards are owned jointly by two packers, that they have refused,

¹ Report, Part III, pp. 30, 61.

² *Ibid.*, Part III, pp. 197, 315, 316.

contrary to the wishes of the citizens of Forth Worth, to allow other packers to come in on the ground that there is not enough stock in that market to support another plant. While it may be argued that the big packers would not have ventured to build plants there if the field had been open to all comers, the fact remains that the power to exclude from packer-owned yards exists and that the interest of the packers is hostile to that of the community and of shippers or may readily become so. A clear case of discrimination seems to be made out at the Sioux City yards.¹

It is also charged that through an ownership of the yards the packers exclude from all convenient places about the premises all banks and cattle loan companies except those controlled by the packers. The Commission attaches considerable importance to this fact because of the power it gives the packer to dominate the live stock credit at their yards.² It does not seem possible that in most places such a situation could seriously hamper live stock men in their credit operations, tho it might often prove an inconvenience. Complaint is made by live stock men because of the large power it places in the hands of packers to force stock on the market in their own interests by calling outstanding loans.³ But the writer knows of no case where this has been done. The transactions of buyer and seller of live stock, it would seem, ought not in any case to be hampered by credit relations such as here indicated.

¹ Report, Part III, pp. 73-80. Mr. L. F. Swift during the hearings on H. R. 13,324 sought to explain away these charges, but his remarks are not convincing. Hearings, Part IV, p. 825. Remarks made by Mr. Veeder during the hearings on the Anderson bill tend to take the edge off the charge of discrimination. *Ibid.*, Part VII, p. 430.

² Report, Part III, p. 70.

³ A. E. deRicqles. Address delivered at Denver, 1915, and printed in the *Proceedings of the Conference on the Marketing of Live Stock*, Chicago, November, 1916, p. 56. Mr. deRicqles is a well known live stock man and is also interested in a cattle loan company.

Such relations are common, however, as between commission firms and feeders.

Ownership of the yards by the packers, it is claimed, also established an undue control over commission firms through whom the live stock is sold. They are the agents of live stock men but are the tenants of the yards company. The relation of tenant and landlord, it is claimed, creates a dependence of the commission men on the packer that ought not to exist; this dependence shows itself, so it is held, by favoring the big packer as against the small one and by weakening the zeal of the commission man for his principal in his dealings. The position of any one of the big buyers in any case is such that no commission firm can afford to be on unfriendly terms with him regardless of the question of ownership of the yards; it is probable that ownership increases the timidity of men who represent the producers of live stock.¹ It can hardly be doubted that much of the activity of the commission men against the Borland resolution for the investigation of the meat industry in the interest of live stock producers, was due to the pressure brought to bear by the packers. With practically all the live stock reaching the large markets necessarily sold through these agents, it is of prime importance that they be kept in a position where they may act independently and aggressively in the interest of their principals. That position they can hardly be said to have occupied in the past.

The Rendering Monopoly

Still another charge of the Trade Commission is that the packers use their ownership of the yards in most cases to secure a monopoly of the rendering of animals which die in transit or in the yards. It is the duty of

¹ Report, Part III, pp. 94-105.

commission firms to sell such animals to the best advantage of the owners. At the St. Paul yards and probably elsewhere in order to get permission to sell stock in the yards and occupy an office in the exchange, the commission houses are required to sign an agreement "that all animals that may arrive dead or that may die in the stockyards of the said first party, and consigned to or in the charge of the said second party shall be sold and disposed of as directed by the said first party as to manner, price, and purchaser."¹ The purchaser designated is usually a rendering company controlled by the same packer interests that control the stockyards. Thus at Chicago, the Globe Rendering Company with a capital of \$2,000,000 is owned by the Morris, Swift, Armour, and Wilson interests. At Kansas City all the big firms have an interest in the Standard Rendering Company; at Omaha all except Wilson are owners of the stock of the Union Rendering and Refining Company; at East St. Louis, Swift and Morris, and at Sioux City, Armour, Swift, and Cudahy, own the monopoly.

The monopoly is a valuable one. The plant required for the business is not costly and it seems that the greater part of the assets of such companies is often "good will," or perhaps more accurately the contract it has with the stockyards company. In the case of the Globe Rendering Company, for example, with outstanding capital stock of \$2,000,000 the schedule returned to the Commission showed only \$200,000 of stock issued for cash while the tangible assets amounted to only \$145,212. The company explained that the item of \$1,800,000 "represents good will and does not include any tangible property." From 1913 to 1917 inclusive the company earned \$692,612, and it paid an average

¹ Report, Part III, p. 69.

annual dividend of \$120,000, or 60 per cent on the paid up capital.¹ At other packing centers similar arrangements prevail in the rendering business and high dividends are paid. At East St. Louis the stockyards are owned by Armour 19 per cent, Morris 35 per cent, and Swift 28 per cent; and the East St. Louis Rendering Company is owned by Morris 74.8 per cent and Swift 25 per cent. The packers were selling their own dead animals to the rendering company in 1916 at the price established for country shippers. But with the rise in the value of grease the manager of Swift and Company wrote the home office that the animals they were selling for $1\frac{1}{4}$ cents per pound were worth $4\frac{1}{2}$ or 5 cents; that it did not seem advisable "to ask the yards company for more money as, if it were granted to us they would also have to raise the allowing price on the dead to country shippers," and he asks for permission "to tank our own dead." The correspondence does not disclose whether permission was granted or not, but it does show that a few days later Armour began to tank his dead hogs, and apparently the price to country shippers was left undisturbed.²

It may be, as claimed by the packers, that the business is usually not more than enough for one plant to handle and that it can be most efficiently handled through one company; but this settles nothing; it only raises the question as to where the power over inevitable monopoly should be lodged. Conditions and incidents such as those related above have resulted in irritating the shippers, rousing their distrust, creating hostility toward the packers, and in leading to demands for radical changes in the control of stockyards and the whole packing industry.

¹ Report on the Meat-Packing Industry, Part III, pp. 61-69.

² *Ibid.*, Part III, p. 66.

The recommendation of the Commission was that the government acquire the stockyards and their customary adjuncts through the Railroad Administration, along with all refrigerator and stock cars, cold storage plants and branch houses, on the theory apparently that all wholesale market facilities should be made a government monopoly.¹ The bill introduced in the House to carry out this war-time program authorized the President to acquire and operate these facilities through such agencies as he might designate. The bill, it appears, never had much chance of passing. It died in committee with the old Congress. Senator Kendrick during the same session introduced a bill "to stimulate the production, sale, and distribution of live stock and live stock products," which provided that the packers should within two years sell their interests in stockyards in excess of 10 per cent of the capital stock. The second Kendrick bill and the Kenyon bill introduced simultaneously in the 66th Congress had substantially the same provision for selling the packer's interest in stockyards except that the sale must be complete. While no vote was reached on this legislation, the consent decree arranged between the Attorney General and the packers, to be noticed later, provides for the sale of all such holdings.

The propriety of this settlement of the matter can hardly be questioned, for reasons which Mr. Edward Morris gave before the House Committee when arguing against railroad control of yard and switching facilities: "It would be the height of folly for any large stockyard to depend upon any one railroad to operate the terminals at the yards, for it would be but natural to expect that this railroad would look after its own patrons first and

¹ The "Summary" of the Report published separately August, 1918. Report, Part I, pp. 76-78.

best." That is the case also against packer ownership. But it is obvious that many of the conditions against which complaint has been made and for which packer ownership has been blamed will persist when the yards have passed to other hands, for which legislative remedies will continue to be demanded.

IV. FLUCTUATIONS IN PRICES OF LIVE STOCK

One of the most general and persistent complaints of the feeders is that prices of live stock so frequently have no relation to cost of production, and, taken for short periods, no relation to natural market conditions; that these fluctuations introduce so great an element of risk as to make feeding one of the most hazardous of industries, resulting in disastrous losses to the feeders and in the end throwing a great burden on consumers as well. Well informed stock men are convinced that these erratic price movements can be explained only on the theory of "manipulation" by packers, whom they regard as the beneficiaries of the changes. The whole meat investigation, so far as the consumers are concerned, centers around the effect of price manipulation by the packers upon live stock production. It is a commonplace among feeders and in the agricultural press that the decline in the country's meat supply is due to the uncertainties of live stock production. The President, in his letter directing the meat investigation, took the same view of the matter. The Kendrick bills, the Kenyon bill, and the Anderson bill are measures "to stimulate the production and sale of live stock and live stock products," of course by removing abuses and irregularities through government regulation.

It is to be regretted that a matter of such vital importance was not made the subject of careful study by

the Federal Trade Commission. The few pages given to it contain only general observations and conclusions. The prices of live stock fluctuate more widely and more frequently than do the prices of live stock products; fluctuations are due to varying receipts of stock, changes in the price of products and to speculative buying; "many of the live stock commission men say the big packers manipulate the daily live stock market"; extracts from market reports and the proceedings of live stock associations indicate that in these quarters there is a firm belief in the packers' policy of "manipulation." The recurrence of phrases in the text such as "making the daily live stock market," the packers "suddenly and greatly change the daily price," when receipts are large "they generally put the prices down to a low level," and the like, shows that the Commission accepts the current views of the big packers' power and policy.¹

In the absence of any concrete study of the price-making forces one must be content with pointing out certain large aspects of the situation.

The packers, of course, protest that they are as helpless in the clutch of the "great law of demand and supply" as the feeders; that what they can give for live stock is dependent on what consumers are willing to give for live stock products; and they encourage the belief, sometimes held by feeders, that producers are as well informed of the market conditions required to forecast the course of prices as the packers themselves.

It is obvious that risks the feeder must take cannot be removed by any proposed legislation. The length of time that must elapse between the beginning of a live stock operation and the market day, especially if the feeder is also a breeder, involves unavoidable risk.

¹ Report, Part III, pp. 105-110, 308-311.

Almost anything can happen in the way of changes in market conditions and cost of production. With these long swing changes the packer has far less concern than the feeder, since his operations with respect to any particular purchase of cattle or sheep are in the main closed within about two weeks; tho in the case of hogs they extend, on the average, over a longer period. It may well be true that as to these changes feeders have as good information as the packers. This can hardly be true of the short swing variations — the daily fluctuations. From the nature of their position the packers know far more than the feeders do. On the supply side they have all the information the feeders have from government reports, movements to markets, arrivals — not at one market only, but at all markets — and are in position to assemble, interpret and utilize such information as no shipper can or is likely to do. They have facilities, moreover, for collecting information as to feed-lot conditions the shippers do not have. On the demand side the advantage is also with the packers. They have access to all the government information the shippers have and are in position to utilize it as the shippers are not, while through their marketing organization they have first-hand information as to stocks on hand, current and prospective demands, to which shippers have no access. Without any collusion on the part of the packers, a weak market for fresh meats or even an anticipated weak market is bound to lead to the same action on their part — a curtailment of purchases and an effort to buy at a lower price. If receipts happen to be heavy at the same time a slump naturally results. If the receipts are normal, or short, and sellers have every ground for expecting a strong market, the packers for legitimate reasons may each make light purchases and weaken the market; and the

shipper is likely to interpret the situation as due to collusion among buyers. The very fact that each of the big packers represents a highly centralized buying organization dealing with many imperfectly informed individual sellers in many markets gives him a bargaining advantage.¹

Without any collusion, it seems clear that fluctuations quite beyond the power of the ordinary seller to understand are likely to occur. If there is a combination among the big packers, their power to "make the market" cannot be questioned. With full and free competition fluctuations are certain to occur in marketing what is essentially a perishable product, and the packers from their position are favorably situated to guard against loss from them, while the producers are not. If the power to "make the market" is exercised through

¹ Mr. Edward Morris, in denying any agreement for dividing purchases, has described the buying policy of his company as follows: "Our buy is governed solely by our capacity to kill, our distributive outlet, and the receipts. Ordinarily, in times of peace, we purchase cattle for three different purposes; that is (a) for distribution through our branch houses, car routes, and such direct trade as we may have; (b) for hotels, railroads, steamships, and institution trade; (c) canners and similar purposes. . . . The first thing in the morning is for the head of the beef department to distribute his orders to the head cattle buyers at the different markets for as many cattle as he figures they can use, giving larger or smaller orders to each buyer according to the receipts at the particular market, the kind of cattle that are coming to the particular market, killing capacity of the plant at each market, and also taking into consideration what cattle have been costing in the various markets as compared with what they have been selling for at other markets. During the day these orders may be changed. Receipts may be larger or smaller than at first reported, and one market may be considerably higher or lower than others, causing changes in the original orders. The head of the beef department also gives his opinion to the cattle buyer as to whether the cattle should be bought higher or lower, basing this opinion on the receipts of the cattle, which fluctuate continually, and also the condition of the beef trade. But above all, the first aim is to operate our plants as near capacity as possible, and the buyer, in order to do so, must buy cattle in the market in which he operates, at the market price, in order to keep his killing gang going.

"As there is no agreement whatever as to the percentage of 'buy,' we have different buyers for steers, cows, hogs, and sheep. Each must be an expert in his particular kind, for the buy is based solely on his judgment as to quality, fill, and dressing.

"You can readily understand that each buyer must have an approximate order for the number of head which he is to buy daily, and it must be self-evident that it would be an absolute impossibility to give instructions in any possible manner to buy a definite and fixed percentage and not have these buyers know it. Our buyers trade absolutely according to market conditions and our needs of live stock." Hearings, H. R. 13,324, Part IV, p. 1038.

combination, price fluctuations which are ruinous to producers may be, with a fair degree of regularity, turned into profits for those who control. It is important, therefore, to examine the nature of the evidence adduced by the Commission to support its charge of a monopoly.

V. THE CHARGE OF COMBINATION

The Commission in unequivocal terms charges that such a monopoly control exists; that the effort of the packers, especially of the three leading companies, to control the meat situation, "extends in an almost unbroken series over a period of more than 30 years, beginning with the agreements and combinations formed by Philip D. Armour, Gustavus F. Swift, and Nelson Morris about 1885 and ending with the present agreements, pools, controls, and multiple communities of interest of their descendants."¹ During part of this period the Cudahy Packing Company, the Schwartzschild and Sulzberger Company (now Wilson and Company), and several smaller concerns were associated in the combination.

The history of these combinations is divided by the Commission into three periods as follows: From 1885 to 1902, the period of the dressed meat pools; from 1902 to 1912, the merger period; and from 1912 to the present, a period characterized by the continuance of a live stock pool in domestic markets and a formal agreement for the division of the South American export trade. During the first period there was an almost continuous arrangement, modified from time to time, for the fixing of beef prices, the division of territory, "the division of certain public contracts, and the compulsion of retailers

¹ Report, Part II, p. 11.

to buy their beef from the great packers." The arrangement was administered through regular weekly meetings of the pool at the office of a joint agent, and was enforced by a system of fines and penalties. That a combination was in force during this period is admitted by the packers.

The court records are so full and clear on this point that there can be no question as to the facts. In 1902 a petition in equity was filed asking for an injunction to restrain the packers from certain monopolistic practices. A temporary injunction was granted, and later this was made perpetual (1903) and finally approved by the Supreme Court in 1905. The order was directed to the five large companies, several smaller ones and a number of individuals, and forbade them to refrain from bidding against each other in the purchasing of live stock, to conspire to fix uniform prices for the sale of meats and the quantities shipped, to fix uniform rules as to credit to dealers and cartage charges, or to demand or receive rebates in any form from transportation companies.

The second period was ushered in within a few days after the granting of the injunction, by the signing of a contract between the three leading companies, later joined by the Cudahy Packing Company and the Schwartzschild and Sulzberger Company, looking toward a merger of the interests concerned. A number of smaller properties in different parts of the country were also bought, not by the big companies, but by Armour, Swift, and Morris as individuals, with the purpose of turning them over to a great holding company modeled on the then recently organized Steel Corporation, "which would own not only these properties but also the properties of the three companies." ¹ Negotiations with the

¹ Henry Veeder, Hearings on Meat Packer Legislation. House Committee on Agriculture, March 10, 1920, Part XIII, pp. 962-966.

banks for financing the enterprise were conducted for several months but finally abandoned at the end of November. The next step was to organize the National Packing Company as a holding company for taking over the properties bought while the larger scheme was pending. This was in 1903. In 1911 an indictment was brought against the company on the theory, as explained by Mr. Veeder, that it was "the center at the meetings of which, in conducting the business of the National Packing Company, the directors of the National Packing Company at the same time transacted the business of the other three companies," a theory declared by Mr. Veeder and others connected with the packers to be without foundation. The trial ended in March, 1912 with a verdict of not guilty. In August following the National Company secured the Attorney General's approval of a plan for selling its properties to Armour and Company, Swift and Company, and Morris and Company, and the plan was carried out.

The verdict of 1912 is regarded by the packers as a vindication. It is safe to say that the public did not generally so regard it, and the Federal Trade Commission does not. It publishes letters from Mr. Veeder's files which indicate that some of the properties turned over to the National Packing Company had been paid for by checks of the packing companies, and not by their presidents as individuals,¹ a distinction as to ownerships regarded at the time of the trial, and still regarded by Mr. Veeder, as vital.² The Commission

¹ Report, Part II, pp. 23, 24.

² Mr. Veeder. The only reason I was careful to distinguish (between individual and company ownership) was that there might be some question of legality of ownership of stocks by these corporations, but those three corporations never did and never attempted and never desired to own them. The three individuals bought those companies because they were going to organize a great big holding company, modeled upon the Steel Corporation, which would own not only these properties but the properties of

holds, moreover, that the methods employed under the old pool were continued with the National Packing Company "as a clearing house"; and that after the dissolution of that company those practices persist. There still exists, it is held, something more than a gentleman's agreement, for as between the big companies "the understandings are definite and precise, and it is far superior in its operations to the clumsy 'pool' of the nineties." ¹

We turn now to a consideration of the evidence of combination adduced by the Commission.

First of all it may be said there has been found no written agreements, no record of proceedings at stated meetings, none of the mechanism that characterized the earlier pool. In view of the experience through which the packers have passed it would be strange if documentary evidence of that sort should have been found. There is, indeed, evidence that they regularly instructed their buying station managers concerning the law and that they were careful to avoid putting anything into writing that had the appearance of an agreement contrary to law. Traveling auditors examined the files of such agents for questionable phrases in their correspondence and the auditors coached them upon the proper terms to use. The evidence presented by the Commission in the main shows what has been done rather than what it was agreed to do. In one case,

the three companies. — There was nothing wrong in that ownership. The company had its buyers in the market and bought in competition with the others, and it had its branch houses located next door to the others and sold its beef in competition with them.

Mr. Tinchcr. That is, you mean that the National Packing Co., with its controlling interest owned as you have enumerated competed with Armour & Co., Swift & Co., and Morris.

Mr. Veeder. Yes, sir.

Hearings on Meat Packer Legislation. House Committee on Agriculture, March 10, 1920, Part XIII, p. 966.

¹ Report, Part II, p. 13.

however, an agreement has been found — the agreement entered into by the big packers and certain British packers in South America to regulate shipments of meat from that country to England. To that case we shall now give attention.

The International Meat Pool

It is charged specifically that as far back as 1911 the big companies were in agreement with certain British companies to control shipments from South America to England and the United States, and that the agreement was renewed in June, 1914. The packers admit that "the charge that there is an agreement to regulate shipments from South America to England has a certain basis of truth," but deny that the arrangement included shipments to America. The agreement, it is held, "was not only justifiable because it helped to make more regular the receipts of perishable meats in England, but the arrangement itself, made necessary by the lack of adequate boat space, was not secret, and was countenanced by British law. Furthermore, this arrangement is similar to the form of coöperation specifically permitted by the Webb bill, which is intended to encourage coöperation in exportation on the part of competing firms in the United States."¹

The Commission's proof of the division of American shipments is apparently based on the evidence in the "Black Book," so-called, a memorandum book found in the office of Sulzberger and Sons, used by Germon Sulzberger, vice-president of the company, to record his conversations with representatives of the various packing concerns on matters of common interest. The

¹ Swift & Co., Analysis and Criticism of Part II of the Commission's Report. See also statement of Mr. Colver, Hearings on the Kendrick-Kenyon bills, Part V, p. 125, January 9, 1920. On this pool, see Part II, pp. 99-107, and Exhibit I.

entries leave it somewhat uncertain whether there was a definite understanding as to the division of imports to America. Sulzberger presented a table showing the proportion of imports arranged for as determined by the space allotted to each interest by the steamship company. So far as can be judged, however, each interest made its own arrangement for space. Sulzberger objects to the large allotment of one company; he exchanges views with another packer as to future shipments of the several companies; he notes, after mentioning the limitation on the number of carcasses to be shipped to England, that, "as regards mutton for the United States, this is entirely unlimited"; the conversation turns readily from English to American shipments as tho they were usually discussed together; yet there is no clear proof of agreement and some expressions used seem to indicate there was none.

Collusion in Domestic Transactions

The Commission also finds that in the selling of meat products within the United States and in the handling of poultry and dairy products there are collusive practices which amount to combination. One practice is that of rotation in price-cutting by the big packers to the injury of the smaller ones. Most of the evidence adduced on this point is in the form of statements of parties claiming to be injured by the practice. The packers explain such local cutting as the result of an oversupply of one kind of meat or another. It is unfortunate that no careful intensive study of the trade policies of the packers was made by the Commission that would throw light on this and other mooted points. While the evidence on this particular point is not conclusive, it certainly adds, when taken in connection

with the known relations of the large companies, to the probability of an understanding.

The mass of correspondence drawn upon by the Commission shows many instances of an exchange of information among the packers on test costs, margins, sales and prices, such as are not to be expected among active competitors. The general explanation of these instances given by the packers is that they are accounts of "past transactions" and in no way indicate an agreement as to future action. The exchange of views sometimes, however, looks to the future. The local manager of the Cudahy Packing Company, *e. g.*, writes the president of the Western Meat Company, a Swift concern, that "our idea would be that 6¼ cents for the average run of grass cattle would be about a fair market figure, provided there are sufficient supplies to meet the summer requirements." ¹

There is no evidence of agreement between these companies or their representatives to be guided by such views. But when the sales agents of the anthracite operators formerly held their meetings to learn the "consensus of opinion" as to prices, it was understood in the trade, probably without formal agreement, that the prevailing views governed the policy of all. How far, if at all, this is true of the packer, has not been clearly established. The cases described by the Commission are all local in character and the acts of local managers. The packers admit there is a tendency among such managers, probably because it offers the most certain means for them to make a good showing, to agree on price policies with their competitors. The company rules clearly forbid such agreements and employees are frequently admonished to avoid violations of the law. Yet one cannot read the correspondence with-

¹ Report, Part II, p. 123.

out a feeling that the Chicago office was more concerned to avoid the appearance of evil than to avoid the evil itself.¹ Another form of friendly coöperation is shown in an entry in the "Black Book" which tells of a conversation between Germon Sulzberger and Mr. Armour. Sulzberger explained that the policy of Armour at New York was injuring his company, whereupon Mr. Armour said "he had no intention to work against us and said he would arrange now to do the following: Reduce New York 10 per cent this week, and 10 per cent next week." An examination of Armour and Company's books showed that the promised reduction of shipments actually took place.² The packers apparently enter no general denial of the practices charged in this part of the report but attack the method of interpretation adopted by the Commission, seeking to justify some of the practices and to temper its statements of fact as to others. If local managers enter into price agreements, it is in violation of strict orders; the interchange of information as to prices has to do with closed transactions, not future plans; the interchange of "margins" is not "formal" but casual; inspection of supplies in one another's coolers is not "periodic" but occasional.³

Question of a Live Stock Pool

By far the most serious charge of combination has to do with the division of live stock purchases. The conclusion of the Commission is that the five large packers "are in an agreement for the division of live stock purchases throughout the United States according to fixed percentages . . ."; that they "exchange confidential

¹ For example, Report, Part II, pp. 108, 109, 146-153.

² Ibid., Part II, p. 110.

³ See, e. g., Swift & Company's Analysis; by far the ablest defense presented by the packers.

information which is not available to their competitors and employ jointly paid agents to secure information which is used to control and manipulate live stock markets . . ."; that they "act collusively through their buyers, in the purchase of live stock"; and that these arrangements "constitute a restraint of interstate commerce," stifles competition among the five companies, brings about a substantial control of prices of meat and meat animals, and gives the "members of the combination unfair and illegal advantages over actual and potential competitors." ¹

The evidence to support this broad charge consists mainly in statements made by former employees of the packers, documents taken from the packers' files during the investigation, and the statistics of live stock purchases.

An example of the first sort of evidence is the statement of a former head hog buyer for one of the big companies that during the National Packing Company period there was an agreement to divide the hog receipts at Omaha, Armour to get 30 per cent, Cudahy 30, Swift 25, and the National's Hammond plant, later taken over by Morris, 15 per cent. "He said he was required to make the hog purchases for his company in line with these agreed percentages." The name of the informant is withheld for prudential reasons. Such testimony is, of course, unsatisfactory, and, unsupported, would have little weight. Documentary evidence from the files of the Cudahy Packing Company is introduced in support of the theory of a division of purchases. The correspondence goes back to the close of the National Packing Company period. On June 21, 1911, E. A. Cudahy writes his Omaha manager:

¹ Report, Part II, p. 26.

When I was coming to Chicago on Monday night, Mr. R. C. Howe was on the train, and he called to see me at this office, and from what he said I don't see anything for us to do only to secure our 30 per cent of hogs at South Omaha, unless we want to take 29 per cent and let Swift run 26 per cent.¹

In another letter of June 30, he wonders "what they are booming these hogs on, because the receipts are so heavy that we cannot do much better on fresh pork cuts, but at the same time I do not see anything for us to do only to buy our full 30 per cent of hogs at Omaha this week, and 50 per cent at Sioux City. It might be well for us to be kind of bearish to start out next week." On October 12, 1911, he writes: "I wired you today that I thought you ought to buy 17 per cent of the hogs at Kansas City, 30 per cent at Omaha, and 50 per cent or just as many as Armour buys at Sioux City." On May 16, 1912, he writes: "The trouble is that there ought to be about 105 per cent to satisfy everybody, but all we are entitled to is 30 per cent and I think we ought to maintain this percentage, even if it is not satisfactory to others." At the close of the year he finds that his company has bought only 28.69 per cent, due to a policy of holding off when the market was advancing. He regards the showing as an indication that "we are slipping backward pretty fast and we must keep our percentage."

No statistics of purchases at this market are given for the National period; but the following table from the Swift files shows how the percentages run from 1913 to 1917.

¹ Report, Part II, p. 68. It seems from the remainder of the letter that Cudahy expected his company's purchase of 30 per cent would force up the market. He goes on to say: "I expect our Omaha and Sioux City market will be out of line for some time if we are going to maintain our position. I don't see anything else for us to do." All these references to "our share," "our percentage" and like expressions are explained by the packers as meaning simply the usual share or percentage, which each packer naturally seeks to maintain. It is pointed out that such expressions are common in all industry.

SOUTH OMAHA — SWINE ¹

Year	Swift	%	Omaha (Morris)	%	Cudahy	%	Armour	%
1913	519,712	24.21	351,289	16.36	622,885	29.02	652,786	30.41
1914	447,633	23.75	309,441	16.42	564,042	29.93	563,646	29.90
1915	478,152	23.40	349,979	17.13	611,474	29.92	603,910	29.55
1916	617,569	24.80	432,715	17.37	720,601	28.93	719,779	28.90
1917	520,940	24.92	375,916	17.99	593,521	28.40	599,644	28.69

It will be seen that the purchases are only an approximation to those said to have been made the subject of agreement during the National period. The Commission explains this by a supposed "readjustment" in favor of Morris when he took over the Omaha property of the National Packing Company. One other feature of the table is to be noted, a feature seen in many tables taken from the packers' files and regarded by the Commission as significant. The figures do not show the total receipts but only those bought by the four large companies operating at this point. Purchases for local butchers, independent packers and speculators are not included in the Swift table. The "30 per cent" Cudahy was striving for was that proportion of the purchases of the five large packers.²

The Commission presents evidence to show division at other markets, as at Oklahoma City, where Morris and Sulzberger (now Wilson) have plants; at Fort Worth, where Swift and Armour operate; and at Denver, where the same two companies have plants taken

¹ Report, Part II, p. 71.

² For the Cudahy letters see *ibid.*, Part II, pp. 29, 30, 38, 67 and for the tables, p. 71. It should be remembered that the Cudahy Packing Co. was not concerned in the National Packing Co. and by implication was not in the alleged combination of that period, tho it had tardily joined in the more elaborate plan for a great holding company which failed in the fall of 1902. The Cudahy interests do not fail to point out the inconsistency of making their letters one of the chief means of proving a conspiracy from which by implication they are exonerated. See Thomas Creigh's Memorandum, Hearings on H. R. 13,324, Part IV, p. 1161.

over from the National at the time of its dissolution. At all these points, it is charged, there is a "50-50" agreement between the companies concerned. The statistics of purchase show, as a matter of fact, a very even division from year to year, but there is not much evidence that the companies claimed any proprietary right in these percentages, or that there was any agreement concerning them. Nevertheless, they seem to have been taken for granted. There is some direct evidence on this point. Wilson's head cattle buyer visited Oklahoma City in 1916, where he found some irregularities of sufficient significance to report. Morris' buyer had "raised us 10 or 15 cents in some places," in retaliation for Wilson buyers having raised Morris "5 or 10 cents"; Morris' buyer had refused on one occasion to follow orders from Chicago headquarters "to buy cattle 25 lower," and took "practically all the cattle on the market that day";¹ the speculators were a disturbing element; and he thus sums up the situation: "I think about as good a way to handle that proposition is to give our men instructions to buy about 50 per cent of the beef cattle received on that market regardless of what others do." More to the point as indicating a definite understanding is the following from a letter by Philip D. Armour to his uncle, J. Ogden Armour, 1915, about the Denver situation:

Swift's plant, from what I hear and from the little I saw of it is far ahead of ours, both as to size and condition. Of course, as you know, everything here is done on a 50-50 basis, and with the facilities we have it is almost impossible to keep up this ratio.

The tables show that in 1914, Armour bought 49.87 per cent of the hogs; in 1915, the year the letter was written,

¹ Report, Part II, p. 73. The letter does not explain how Wilson knew what instructions had been sent by Morris to his buyer.

47.70 per cent; in 1916, 48.54; and in 1917, 49.54 per cent. The cattle purchases for 1916 were 50.73 per cent to Swift and 49.27 per cent to Armour.¹

Not only for particular markets, but for all markets, this plan of apportioning purchases is said to prevail. The proof of an agreed division rests mainly on such evidence as that given above for particular markets and on the observed constancy of the actual purchases made. There is a wide variation in the percentages bought from week to week; this is admitted by the Commission, but the cumulative figures during the year and those from year to year are striking, as shown in the table which follows. The figures, covering all markets where the agreement is said to be in force, were found conveniently arranged in the files of one of the packers.²

CATTLE

Year	Number of head	Swift	Armour	Morris	Wilson	Cudahy
1913....	5,082,619	33.90	27.18	17.80	11.74	9.38
1914....	4,841,689	34.01	27.16	17.97	11.56	9.30
1915....	5,279,407	34.47	27.57	18.14	10.15	9.67
1916....	6,097,183	34.59	27.04	17.86	10.94	9.57
1917....	7,629,569	35.07	26.96	17.14	10.85	9.98

SHEEP

Year	Number of head	Swift	Armour	Morris	Wilson	Cudahy
1913....	10,174,937	39.49	28.65	12.95	9.59	9.32
1914....	10,085,936	38.94	27.80	12.46	10.27	10.53
1915....	8,778,591	38.85	28.13	12.60	10.32	10.10
1916....	8,969,462	38.93	27.83	12.32	10.11	10.81
1917....	7,059,268	39.64	26.25	12.33	10.65	11.13

¹ Report, Part II, pp. 75, 76, and 252.

² Ibid., Part II, p. 57.

Hogs

1913....	16,273,917	36.59	31.76	13.18	7.72	10.75
1914....	14,564,933	36.61	31.75	13.15	7.97	10.52
1915....	17,316,443	36.37	31.44	13.15	8.79	10.25
1916....	20,350,372	36.04	31.57	13.33	8.44	10.62
1917....	16,343,612	36.01	30.82	13.17	8.96	11.04

The packers attack the argument based on percentages in two ways. In the first place, it is held that the use of percentages where large numbers are involved is wholly misleading since a slight change in per cent makes so wide a variation in number as to destroy the theory of agreement.¹ The second mode of attack is to accept the fact of a striking constancy in the percentages, but to show that they are no more striking than those for recognized competitors like groups of railroads, manufacturers of paper, insurance companies, and merchandisers.² Businesses of all kinds, it is held, reach such an equilibrium in the course of their development and steadiness of percentages of output simply become the expression of plant capacity, facility for distribution, and established trade. So far, indeed, from being an evidence of combination such constancy is the best proof of active competition. "The fact is that each packer watches the others so closely that no one of them is able to gain appreciably on the others, and consequently each remains fairly constant from year to year."³ Mr. Armour gives much the same kind of an explanation of the situation at Denver, referred to above:

¹ Edward Morris, Hearings on H. R. 13,324, Part IV, pp. 1039-1042.

² See, e. g., Weld's figures presented to the House Committee on Agriculture, Hearings on the Anderson bill, March 11, 1920, Part XIV, p. 1024.

³ Swift & Co., Analysis and Criticism, p. 29.

When the National Packing Company was dissolved, there were two plants at Denver, and they had for some years been doing about the same amount of business under the National Packing Company. We took one plant and Swift took the other plant. Naturally, when we took that plant it was our desire then, the same as it would be now, to maintain the position the plant we took over had, and that happened in that case to be one-half the business.¹

This theory of automatic stabilization of industry at relatively fixed percentages — not of the whole business, but of, say five of the largest, most intimately related companies in it — would be easier of acceptance if certain scraps of information had not been brought to light by the investigation. The question of “percentages” was not new to the packers when it was made public by the Commission. The packers all keep such figures. In certain tables of comparative percentages from Swift’s files there are references to a “1910 arbitrary” which the Commission interprets as the basis for certain readjustments of agreed proportions, when the property of the National Packing Company was distributed in 1912. The company explains this “arbitrary of 1910” as a convenient base for it to compare what it and its competitors were doing; nothing more. It is significant, however, that Sulzberger in his “Black Book” memoranda should on more than one occasion be harking back to the figures of that same year, not for making his own watchful observations on what his competitors were doing, but for purposes of conference with the officials of other large companies. The information is scrappy, and the notes may be capable of more than one interpretation, but they tend strongly to confirm the theory of some sort of understanding.²

¹ Hearings on Senate Bill 5305, p. 664; see also, Hearings on H. R. 13,324, Part IV, p. 754.

² Report, Part II, Exhibit I, the “Black Book,” especially the tables, p. 214, and the entries for April 21, May 7, June 4, and June 18, 1914. One question raised at these conferences was that of including exports in the percentages; another related to the inclusion of the purchases of certain affiliated companies.

There is some other evidence that stabilization at the current percentages, such as they are, has not been wholly fortuitous. Mr. Armour tells us how an equilibrium was reached at Fort Worth. He bought the yards there, whereupon Swift gave signs of locating at Dallas, 30 miles away. To prevent this he offered to sell Swift a half interest in the Fort Worth yards.

Q. Now, when you had this talk with Swift, and suggested to him to come over to Fort Worth, did you not reach an understanding that if he was to come over there, it was going to be on a 50-50 basis . . . ?

Mr. Armour. I think that is the only way he would come.¹

This, it will be noticed, goes back of an assumed "natural plant capacity" to show how it was determined. The testimony of Mr. Edward Morris² goes to show that his plant capacity and Sulzberger's (now Wilson and Company) at Oklahoma City was determined in the same way; and, that once determined, it must be respected. He decries the amount of space "devoted in this Report to the so-called 50-50 markets." It was to the interest of the live stock industry in the Southwest to build plants there and develop this market.

Could it be built up by "ruinous competition" ? In other words, if one should attempt to buy more than the natural capacity of his plant, or his share, if you please, the necessary result would be retaliation, and the necessary result of that would be that one or the other would ultimately be driven out of the market and then you would have no market at all. And yet this Commission lays hold of the situation at three or four yards, similarly situated, and on the unjust theory evolved, would create prejudice and feeling against the packers, while they are really operating in the interest of the cattle man and the hog man. . . . This theory of the 50-50 markets reads very nicely, but when you get down to cold facts you will find that it is in the interest of the producer that these little markets near the sources of production be maintained and they cannot be maintained by "ruinous competition."

¹ Hearings on the first Kendrick bill, Senate bill 5305, Part I, p. 655.

² Hearings on H. R. 13,324, Part IV, p. 1026.

Swift and Company take the same practical view of the matter. Speaking, not merely of the small markets, but generally, the company says: ¹

It is true that the competition in purchasing does not take the form of "cut-throat" competition, except perhaps at certain times. Any packer might be able to increase his proportion inordinately by bidding up the going out and in the market; or, in other words, by paying more than the animals are worth for dressed meat. Any packer who tried this would of course lose money, and the chances are that even if this were tried, the other packers would follow suit in order to maintain their position in the market. . . . If there is anything wrong with the lack of cut-throat or destructive competition that would result from a reckless attempt to increase purchase percentage by bidding up the market inordinately, the packers are guilty.

One cannot find fault with the soundness and practical wisdom of this reasoning. But it raises a question as to what kind of competition is left after destructive competition is eliminated.

Collusive Practices in Buying

Faith in an open competitive market is further tried by certain market practices more or less questionable. The old plan whereby competition was restricted by one packer's buying a string of cattle and apportioning them to others at the same price seems long ago to have been abandoned. But a policy of making "part purchases" has grown up that has roused suspicion and dissatisfaction. It seems proper enough for each packer to buy only such a number of each kind of cattle as he wants for the day; but he gets the kinds he wants by breaking up many lots and this is done as a buying policy, directed from the head office. The effect intended has been to depress prices. When the president of one company which followed this policy rigorously found many complaints arising from it, he ordered a

¹ Swift & Co., Analysis, pp. 27, 28.

modification of the rule, and got back the report from his manager at that point that the modified rule had "given a snap to the market." It may be difficult to prove that any agreement exists to split the purchases; but when the big companies, capable of handling very large lots of given grades, follow the same policy, it tends to confirm the popular belief in collusion.

The same may be said of the method of reporting "split shipments" — those made by a feeder to two or more markets for the sake of any advantage he may derive. The reporting and statistical service of the big packers has great skill in detecting such "splits." They are promptly reported to all the markets concerned for the guidance of buyers. Their aim is to pay the same price for the same grade of cattle, "keep the market in line," make it a matter of indifference whether the feeder ships to one market or another. "Splits" do not always sell for the same, but uniformity in price is certainly striking.¹ It is contended by the packer that a useful service is performed in "keeping the markets in line," since it prevents gluts in one place and shortages in another. That the even distribution of stock to the various markets is desirable goes without saying — if it can be made on the basis of proper prices. But it is evident we have here a device for destroying that competition of markets generally regarded as essential to healthy trade.

Of more significance is the practice of "wiring on." This is an old device. It was complained of by shippers as early as 1891,² tho it has always been denied by the packers. In case a shipper is not satisfied with what he is offered in one market, he sometimes forwards his stock to another. He is almost certain to find wherever he

¹ Report, Part II, p. 87.

² Senate Reports, No. 829, 51st Cong., Private Sess., pp. 615, 1891.

goes and however he may have tried to cover his movements, that information as to what he has been offered has preceded him. On this subject the Commission says: ¹

A study was made of how the packers secure market and shipping information at Kansas City. There it was brought out that the Big Five jointly employ two men to gather market information. This arrangement has been operating at Kansas City for many years. Not only were these agents of the five companies required to report "estimated" receipts and all live-stock purchases, but they were required to secure from the stockyards company's records early each morning between 5 and 6 o'clock a list of all shipments made on the day before to other markets. This information was used by the big packers, according to two buyers at Kansas City, as a basis for "wiring on," that is, following shipments to a second market.

At the time the investigation of this matter was made in Kansas City these two employes of the combination were being paid by Wilson & Co., Inc. Wilson & Co., Inc. in turn pro-rated this semi-monthly salary expense among the other packers on the basis of their live-stock percentages.

Of this method Swift and Company say:

The practice of wiring on is in itself perfectly legitimate. Suppose a buyer for Marshall Field & Company, located in New York, were offered a bill of goods at a price which he was unwilling to pay. The seller of these goods decides to go to Chicago and approach a Marshall Field buyer there. The New York buyer naturally wires the Chicago buyer, stating the price he has offered.²

It looks like a simple and harmless bit of efficiency. But the two cases are not parallel. Suppose the seller in this case had tried to conceal his movements in order that he might meet buyers in a new market without prejudice, and that information about them had been obtained by questionable means from an unfaithful servant of the carrier; suppose when he got to Chicago he found the information he had tried to keep away from the buyers was not only in the hands of Marshall

¹ Report, Part II, p. 46. See also Haines' report, Hearings on Senate bill 5305, 55th Cong., 3d Sess., Part II, pp. 2106-2108.

² Swift & Co., *Analysis and Criticism*, p. 53.

Field, but in the hands of four other buyers intimately associated with him in numerous enterprises, all interested in "keeping the market in line," if nothing more; that these five buyers represented 80 per cent of the buying power of the market; and that the seller was well aware that to whatever market he turned he would find the same five buyers there representing on the average 80 per cent of the buying power — then you have a parallel and then you have the situation the live stock men have to face. It is not to be wondered at that every appearance of collusion should be taken as a proof of combination against them.

Is the charge of combination sustained by the evidence? Everything depends upon one's point of view and the definition of terms — what constitutes a healthy state of competition, combination, proof. The packers seem to think the charges imply a formal agreement looking to the establishment of an absolute and complete monopoly as among the five large companies. No formal agreement has been disclosed; and it is clear that there is no absolute and complete monopoly — the existence of more than 200 "independent" packing companies contributing to the meat supply shows it. The evidence printed shows, too, that among the five companies there is active competition, that the identification of interests is far from complete, and the packers are doubtless right in saying that if all the documents in the Commission's possession were printed they would give more conclusive proof of competition. This would not invalidate the charges of the Commission. In the days of the hardest and fastest railroad pools there was always some sort of competition and there is always likely to be till there is complete consolidation; and even then a competition persists. There is competition between the constituent com-

panies of the same concern; there is competition of a kind between the departments of the same company. Mr. Veeder, as we have seen, thinks that perfectly satisfactory competitive conditions existed as between the National Packing Company and the three companies whose presidents held the stock of that concern. He can show such competition now. But there is a natural distrust of it. Even tho point after point of the case against the packers may be reasonably explained away, one's mind stalls at accepting so many explanations and finally settles down to the belief that the theory of a combination is more credible than the explanations. The Supreme Court had somewhat the same situation to deal with in the injunctions suit, 1903-04, already mentioned. Mr. Justice Holmes, speaking from a slightly different point of view, describes fairly well the situation as it appears at present:

The scheme as a whole seems to us to be within reach of the law. The constituent elements, as we have stated them, are enough to give to the scheme a body and, for all that we can say, to accomplish it. Moreover, whatever we may think of them separately when we take them up as distinct charges, they are alleged sufficiently as elements of the scheme. It is suggested that the several acts charged are lawful and that intent can make no difference. But they are bound together as parts of a single plan. The plan may make the parts unlawful. . . . The statute gives this proceeding against combinations in restraint of commerce among the states and attempts to monopolize the same. Intent is almost essential to such a combination and is essential to such an attempt. Where acts are not sufficient in themselves to produce a result which the law seeks to prevent — for instance, the monopoly — but require further acts in addition to the mere forces of nature to bring that result to pass, an intent to bring it to pass is necessary in order to produce a dangerous probability that it will happen. . . . But when that intent and the consequent dangerous probability exist, this statute, like many others and like the common law in some cases, directs itself against that dangerous probability as well as against the completed result. What we have said disposes incidentally of the objection to the bill as multifarious. The unity of the plan embraces all the parts.¹

¹ 196 U. S. 396.

Taking into account the history of the development and expansion of the great companies, their present great size, their proximity, the close family relations which exist, the more than hundred enterprises in which they are jointly interested, the percentages, the scraps of information disclosed by the correspondence, the evidence of the "Black Book," the market policies just described, the ease with which concert of action can be secured at a nod through what is perhaps the most powerful buying and selling organization in the world — considering all these factors together, one cannot but conclude there is in the situation a "dangerous probability" of monopoly.

VI. THE PALMER-PACKER AGREEMENT

The view that there is danger of monopoly seems to be taken by the Department of Justice. After four or five months of study of the evidence collected by the Commission during the spring and summer of 1919, the Department concluded that there had been established such a degree of probability of monopoly as to warrant prosecution under the anti-trust law. During September and October an investigation was made before the Federal Grand Jury at Chicago, and a similar investigation was being arranged for in New York late in October, when the Attorney General received intimations from the packers that they desired to confer with him, that they felt they had never been accorded a proper hearing before the Federal Trade Commission and that before action was taken by the Department they would like to present their side. This led to a series of discussions which ended late in December in an agreement on the part of the packers to the terms of a decree to be filed in the Federal Court for control-

ling their activities. This was before suit had been commenced and before it had been decided whether to proceed under the civil or the criminal sections of the law. Following is a summary of the terms as prepared by the Attorney General.

Under this decree the defendants, and each of them, either as corporations or as individuals, are compelled in brief:

1. To sell, under supervision of the United States district court preferably to live-stock producers and the public, all their holdings in public stockyards.

2. To sell, under the same supervision, and in like manner, all their interest in stockyard railroads and terminals.

3. To sell, under the same supervision and in like manner, all their interests in market newspapers.

4. To dispose of all their interests in public coldstorage warehouses except as necessary for their own meat products.

5. To forever disassociate themselves with the retail meat business.

6. To forever disassociate themselves with all "unrelated lines," including wholesale groceries; fresh, canned, or salt fish (and a large number of other commodities enumerated).

7. To forever abandon the use of their branch houses, route cars, and auto-trucks, comprising their distribution system, for any other than their own meat and dairy products.

8. To perpetually submit to the jurisdiction of the United States District Court under an injunction forbidding all the defendants from directly or indirectly maintaining any combination or conspiracy with each other, or any other person or persons, or monopolizing or attempting to monopolize, any food product in the United States, or indulging in any unfair and unlawful practices.

The decree further provides that jurisdiction is perpetually retained by the court for the purpose of taking such other actions, or adding at the foot of the decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of the decree, or for the purpose of entertaining at any time hereafter any application which the parties may make with respect to this decree.

The question of dealing in butter, cheese, eggs, and poultry was considered, but as will be seen was left out of the settlement altogether. The packers were left undisturbed in their cottonseed oil and oleo operations,

and also in the possession of their refrigerator cars. Mr. Palmer explained to the House Committee on Agriculture that by disassociating the packers from the handling of groceries and other "unrelated" products, and by debarring them from using their cars for the transportation of such commodities owned by others, he had taken "the poison out of the refrigerator car complaint." It should be noted that while the companies cannot handle the "unrelated" commodities, nor own the stock of companies handling them, the packers as individuals may; but individually or jointly they may not own more than 50 per cent of the stock of such a corporation or more than a half interest in a firm handling these goods.

This settlement does not decide the question as to whether there is or was a combination in restraint of trade. The language of the Attorney General leaves no doubt, however, as to his belief in a combination and in the danger of the development of a vast food monopoly; that, in his view, is where the development of the last few years was leading. He seems to recognize the fact that he was smashing a highly efficient machine but that it was necessary to choose between efficiency, monopoly, and semi-benevolent autocracy on the one hand and relative inefficiency, free competition, and the open door to industry on the other.¹

¹ The memorandum containing the terms agreed on is printed in the *Hearings on the Kendrick-Kenyon bills*, Part IV, pp. 18 ff., January 7, 1920. Mr. Palmer's explanation of the terms follows. See also his statement before the House Committee on Agriculture in the *Hearings on the Anderson bill*, Part XXXI, April 3, 1920.

Proposed Legislation

Meanwhile Congress has given considerable time, through its committees, to a study of the problems presented by the Report. The Sims bill was introduced in the House in November, 1918.¹ It authorized the President to acquire and operate through such agencies as the President might direct all the larger stockyards of the country, together with exchange buildings, terminal railroads, rendering and serum plants, market news-service, market facilities and other yard adjuncts, to acquire contiguous territory for lease to packing plants and to acquire and operate special equipment cars including refrigerator and stock cars. The bill reflects the war psychology of the period, when no proposal for an extension of government activities seemed too extravagant. The bill probably had little chance of passing even as a war measure, and with the signing of the armistice its defeat was certain. It died in the committee with the old Congress.

Simultaneously with the Sims bill, the first Kendrick bill was being considered in the Senate.² It, too, died in the committee; but it became the pattern for a new bill by Mr. Kendrick in the 66th Congress and another of the same general tenor by Senator Kenyon.³ The Kenyon bill may be selected for description. The purpose of the measure seems to be to treat the packing industry and busi-

¹ H. R. 13,324, 65th Cong., 3d Sess. Hearings before the committee on Interstate and Foreign Commerce were begun December 19, 1918 and continued till the middle of February 1, 1919; published in five parts.

² Senate bill 5305, 65th Cong., 3d Sess. Hearings were held before the Committee on Agriculture and Forestry during January and February, 1919; published in two parts.

³ Senate bill 2199 and Senate bill 2202, respectively. Hearings were held on the two measures before the Committee on Agriculture and Forestry during August and September, 1919, and were published in two parts. A few supplementary hearings were also held in January, 1920.

nesses connected with it as public utilities. The Sims bill, after placing all marketing facilities in the hands of the government left the packers to carry on their business in their own way. This bill requires all interstate slaughterers, commission firms, operators of stockyards, large handlers of poultry and dairy products and all stockyards news services, to be licensed. The packers are particularly prohibited from engaging in any unfair, or unjustly discriminatory practice; from apportioning purchases of live stock or live stock products among other packers, or of "unreasonably" affecting the price of live stock; from engaging in manufacturing or dealing in side lines where the effect may be "to substantially lessen competition . . . or tend to create a monopoly"; from conspiring to apportion territory purchases or sales, or to prevent others from engaging in a competitive business. The power to grant, and to suspend or revoke, licenses is vested in the Secretary of Agriculture. An appeal from the revoking order of the secretary lies to the Circuit Court of Appeals. In case the secretary is sustained, or when no appeal is taken, the court is required to appoint a receiver to take over and operate the property. The active administrative officer is a Commissioner of Foodstuffs appointed by the President but acting under the supervision of the Secretary of Agriculture. The secretary is clothed with large powers of investigation and regulation; and is authorized to establish a system of records and accounts from which the licensee may not depart.

As already pointed out the bill requires the packers to sell their interest in stockyards within two years. It provides also important changes in the refrigerator car service. The carriers are required to furnish an adequate supply of such cars "upon reasonable request

therefor without unjust discrimination"; and they are forbidden to move the packers' cars "except upon the conditions that they may be furnished by the carrier to any person making reasonable request for such cars, in accordance with the provision of this section, under such arrangements as to just compensation and otherwise as may be made between the carrier and such person owning or controlling such cars, with the approval of the Interstate Commerce Commission." This is one of the most fiercely contested provisions of this proposed legislation. The situation is not an easy one to meet. It is not intended here to enter upon a discussion of the private car feature of the investigation, but this much may be said, that there has been a great deal of complaint, not as in the old days because of low freight rates concealed in high mileage payments (for the financial return is in recent years very low) but because of the superior service the packers' cars give. This complaint has been made by the small packers who own or lease only a few cars and who cannot afford such an organization as the big packers, with their hundreds of cars, have at strategic points to keep them moving and to prevent them from being diverted from the exclusive use of the packer. More complaint, however, has been made by the shippers of non-meat products requiring refrigeration, because of the superior service enjoyed by the packers with respect to these products. The aim of the provision apparently is, while permitting the packers to retain ownership, to compel them to pool their cars with such as the carriers may be forced to acquire. The packers have professed their willingness to sell their rolling stock if they could be assured of an adequate supply of railroad cars; but, of course, they can have no assurance of this. The measure would tend to eliminate the inequalities in service complained of, but this would

probably be done at the expense of the efficiency of the big packers' service without much improvement for the service of others; and it seems likely it would result in a poorer service for the meat industry as a whole. In view of the packers' retirement from the grocery business and the possibility of improving the shipping rules of the carriers this section of the bill appears of very questionable value.

While the Senate Committee has reported a bill differing in important respects from the Kendrick and the Kenyon bills, the provisions of these measures have appeared in the House as the Anderson bill,¹ where it is still pending. The substitute bill reported in February by Mr. Gronna aims at the same general ends as the Kenyon bill, but differs in important respects. The scope of the bill is narrowed to include only the packers and the "operators" of stockyards. These are not required to take out a license, but may do so under Section 25, designed "primarily to stimulate coöperative organizations to conduct local stockyards and packing houses" without financial aid from the government, but with a vast deal of advice, coöperation and supervision. Registrants agree beforehand to comply with such regulations as the commission created by the act may impose. The packers express the fear that altho registration "in form may be regarded as permissive, it will become, in fact, compulsory because it gives opportunity for gross favoritism to those who register and all sorts of discrimination against those who do not." They consider this provision, for all practical purposes, as objectionable as the license system.² "The bill seeks to establish for this industry," says the Senate commit-

¹ H. R. 6492, 66th Cong., 1st Sess.

² "Analysis" of the Gronna bill by the Institute of American Meat Packers. Hearings on the Anderson bill, Part XVI, p. 1252.

tee, "a degree of public supervision comparable to that which has long been exercised over railroads by the Interstate Commerce Commission" and it creates a Federal Live Stock Commission to enforce its provisions, and the rules, regulations, and orders which the Commission may . . . prescribe in conformity with this act." "No commissioner shall engage in any other business, vocation, or employment, or be directly or indirectly interested in the business of any packer or operator." The Commission is given powers of investigation similar to those exercised by the Federal Trade Commission, it may require accounts to be kept in prescribed form, and it takes over all the duties of the Bureau of Markets relating to the production, distribution, and consumption of live stock and live stock products. The bill does not deal with the packer car question.

If the packers hoped to ward off legislation by their arrangement with the Department of Justice, they are likely to be disappointed. The cattle men who have been urging legislation and a majority of the committee on agriculture in each house are convinced that positive law is needed to supplement and make effective the consent decree. Since the inquiry began, the packers have voluntarily abandoned certain objectionable practices not dealt with in the decree. But it is doubtful whether the advocates of regulation will be content to leave such matters to the discretion of the packers. What sort of legislation will finally commend itself to Congress is still uncertain. The real contest, for which the stage now seems to be set in both houses, is at bottom to be over the question, not as to what kind of legislation is to be imposed on a "private industry," but very definitely whether the stockyards and live stock commission business at least shall be placed in the class

of public utilities and regulated as such, and somewhat less definitely whether the meat-packing industry is to be placed in essentially the same class.¹

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¹ Meanwhile at least one of the states has enacted some packing house legislation of its own. Before the Kansas legislature of 1920 had been in session a month it had passed a bill declaring the packing house, stockyards, live stock trading, and rendering businesses "to be a public interest . . . subject to reasonable supervision by the state" and requiring those conducting such businesses to "furnish reasonable, adequate, and safe service . . . under reasonable rules . . . at reasonable rates and charges." All persons engaged in these activities are required to apply for a license to the Kansas live stock bureau created by the act, composed of the state live stock sanitary commissioner and two other members to be appointed by the governor and to serve without pay. The bureau may grant, refuse, and revoke licenses and to it is delegated the power to establish and enforce rules, regulations, rates and charges, relating to the industry. Appeals from its orders may be taken to the newly created court of industrial relations and from the orders of this body to a court of competent jurisdiction. It is worth noting that the state sanitary live stock commissioner, the only paid officer on the bureau, must, by previous law, have been "extensively engaged in the breeding and handling of cattle for a period of ten years immediately preceding his appointment."